IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 11 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

POPATBHAI MOHANBHAI PARSALA

Versus

LILAPUR SAMUDHAYIK SAHKARI KETHI MANDLI LTD.

Appearance:

MR DC DAVE for Petitioner

MS MEGHA JANI for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 08/01/2001

ORAL JUDGEMENT

Appeal admitted.

1. Heard learned advocate Mr. D.C. Dave for the appellant and Ms. Megha Jani, learned advocate for the

respondent no. 1 on caveat.

2. The appellant herein was defendant no. 8 in Special Civil Suit No. 20 of 2000 before the Ld. Civil Judge [S.D.] Ahmedabad (Rural) at Mirzapur. The suit was filed by the present respondent no. 1 seeking declaration and injunction against present respondents nos. 2 to 8 and the appellant. The declaration and injunction was in respect of survey no. 1483 of village Ognaj of Daskroi Taluka of Ahmedabad District admeasuring 3 acres 34 gunthas i.e. 15,580 sq. mtrs. or 16,634 sq. yards. According to the plaintiff the said piece of land was owned by the defendants nos. 1 to 7 and by virtue of agreement to sell entered into in 1991 and a sale deed executed on 16/1/1997 the plaintiff society was put in possession of the suit property. It was the case of the plaintiff that defendant no. 8 present appellant was trying to disturb the possession of the plaintiff and, therefore, he may be restrained from disturbing the possession and putting up any construction thereon. Pending the suit an application for temporary injunction was also tendered. The trial Court after considering rival cases, passed an order on 22/12/2000 granting injunction in favour of the plaintiff and against the defendants. The trial Court also directed the plaintiff society to maintain status-quo in respect of the construction appearing in mark 16/3. The plaintiff was also directed to intimate the Court in advance in writing before entering into any transaction in respect of the suit land.

3. Aggrieved by the said order the present appeal is preferred. The case of the appellant original defendant no. 8 is that he is the owner of the land in question by virtue of the registered sale deed executed on 17/1/1997 by respondent no. 2 and is put in possession and, therefore, the trial Court has erred in granting injunction against the defendants which include the appellant also.

4. Mr. Dave, learned advocate for the appellant has contended that the sale-deed on which respondent no. 1 original plaintiff has relied to indicate title as well as possession, was executed by the power of attorney holder, which according to the appellant is not valid. The power of attorney holder was not authorised to execute a sale-deed. Apart from this, according to Mr. Dave the plaintiff had not approached the trial Court with clean hands. The factum of construction put up by the defendant no.8 was suppressed by the plaintiff. Mr. Dave indicated that the construction that is put up on

the disputed land is not such that could have been put up over night and, therefore, the plaintiff did not deserve any injunction in view of the material suppression. According to Mr. Dave the owner of the land - present respondent no. 2 has supported the appellant in his written statement before the trial Court and, therefore, the Court ought not to have granted the injunction in favour of the plaintiff/respondent no.1.

5. Ms. Jani appearing for respondent no. 1 original plaintiff submitted that the plaintiff is a society which had entered into a Banakhat (agreement to sell) on 9/5/1991. That document is produced at mark 3/7. At that point of time part consideration was paid. Subsequently in September 1991 the society was put in possession and at that point also part consideration was paid. Later on again the remaining entire consideration except Rs.1,000/- was paid to the original owner and then on 16/1/1997 remaining Rs.1,000/- was paid and sale deed was executed. Ms. Jani submitted that the piece of land is large and any body can forcibly or surreptitiously enter into it and start construction. According to Ms. Jani the plaintiff has not suppressed the factum of construction. In fact, when the plaintiff came to know about the construction, an application for contempt of Court was also moved. Ms. Jani submitted that the sale deed in favour of the plaintiff was challenged at one stage but the suit was withdrawn and thereafter it has not been challenged till date. Defendant no. 8 who claims to be owner and occupant of the suit land has only a pencil entry in his favour to support his case and a sale-deed subsequent to the sale-deed in favour of the plaintiff. She submitted that the appellant has not been able to indicate passing of consideration in favour of the owner of the land at the time of execution of the sale-deed dated 17/1/1997. Under the circumstances, the trial Court has rightly granted injunction.

6. Having regard to the rival contentions and having gone through the copy of the paper book of the trial Court produced on the record by Ms. Jani, this Court is of a view that at this stage there is sufficient material to indicate that the plaintiff-society has paid consideration to the original owner. It is also a fact that in 1991 the society was put in possession of the land. This fact has been admitted by the original owner in the written statement, but according to him some clandestine transaction was entered into between the society and the appellant, for which he has nothing to show in support and then he states that he has put the appellant in possession. However, the contemporaneous

record indicates execution of a prior sale-deed in favour of the plaintiff society and on the basis thereof requisite entries having been made. It also requires to be noted that the sale-deed executed in favour of the plaintiff has not been challenged subsequent to withdrawal of the suit No. 576/1998 which came to be withdrawn with permission in October 2000. Keeping all these aspects in mind and having regard to the observations made by the trial Court, this Court does not deem it necessary to interfere with the order of the trial Court impugned in this appeal. The interest of the defendant no. 8 i.e. present appellant is also protected by the trial Court by directing the plaintiff to maintain status-quo in respect of the construction appearing in mark 16/3. The Court has also directed the plaintiff to intimate the Court in advance in writing regarding any proposed transfer transaction and, therefore, the interest of the defendants would be protected in the event the plaintiff proposes to enter into any transaction.

7. The documents on record indicate that there is a dispute regarding title as well as possession. The possession of the plaintiff is accepted on prima-facie basis by the trial Court and this Court is not inclined to make any adverse observation. However, status-quo shall be maintained in respect of the land and construction in question till the suit is finally decided. It would be open for the parties to move the trial Court for expeditious disposal of the suit. The parties are directed to cooperate in disposing of the suit. The appeal stands disposed of accordingly. No order as to costs.

[A.L. DAVE, J.]

* Pansala.